RECEIVED

JUL 31 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 1995	)	MD Docket No. 95-3
	)	
Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act	)	DOCKET FILE COPY ORIGINAL

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

EMI Communications Corporation ("EMI"), by its attorneys and pursuant to 1.429 of the Commission's rules, hereby submits this Petition for Partial Reconsideration of the Commission's Report and Order ("Fees Order"), released June 19, 1995, in the above-captioned proceeding. EMI, a microwave provider and non-dominant interexchange carrier ("IXC"), seeks reconsideration of the Fees Order to the extent that it results in "double charging" companies like EMI that use licensed technology to provide unlicensed services on the interstate network.[1]

EMI is the Part 21 licensee of more than 200 microwave point-to-point stations. In addition to traditional point-to-point microwave service (e.g., distribution of radio and

---

[1] It is unclear how many, if any, other providers are affected in the same way by the FCC's decision. Thus, to the extent EMI is in a unique position, it is requesting a waiver of Section 1.1154 of the Commission's rules in a separate filing made today.

No. of Copies rec'd 0+1
List ABCDE

television signals), EMI uses these licenses to provide interexchange service in the eastern and northeastern United States. EMI, nevertheless, competes directly with other landline interexchange providers.

Pursuant to the Fees Order, EMI, like other microwave providers, is required to pay $140 annually for each microwave call sign.[2/] Because it also provides long distance service, however, the company is subject to an additional fee not imposed upon its competitors. Specifically, EMI is required to pay a fee based upon the gross revenues derived from its interexchange service on top of the call sign assessment.[3/]

EMI is not aware of any other situation whereby a provider is required to pay fees once for the technology it uses and a second time for the service it provides using that technology. Indeed, in the Fees Order, the Commission adopted special measures to keep from double charging regulated industries. For example, it provided that, "[i]n order to avoid imposing a double payment burden on resellers, [it] will permit interexchange carriers to subtract from their reported gross interstate revenues any payments made to underlying carriers for telecommunications facilities or services."[4/] Notably, with regard to mobile services, the Commission stated that it did not have the data necessary to structure a fee schedule in a manner

---

[2/] 47 C.F.R. § 1.1154.

[3/] Id.; Fees Order at ¶ 134.

[4/] Fees Order at ¶ 135.

that would protect resellers from double payments.[5] Thus, while mobile licensees pay fees assessed on the basis of mobile units or telephone numbers, resellers are not required to pay any fees whatsoever.[6]

Other point-to-point microwave licensees that use their frequencies solely for video and data distribution are not subject to separate fees based upon the revenues derived from their transport business.[7] In addition, Local Television Transmission Radio Service, Digital Electronic Message Service, Multipoint Distribution Service, and Multichannel Multipoint Distribution Service licensees are required to pay only the $140 per call sign fee.[8] Similarly, as noted previously, mobile operators are not assessed revenues-based fees on top of the per-unit fees, even though many mobile licensees, like EMI, are users of the interstate network.

Requiring payment of both a gross revenues fee and a call sign fee unfairly penalizes companies like EMI because of their choice of technology. This is directly contrary to the Commission's frequently expressed goal of adopting policies designed to encourage the use and development of alternative

---

[5] Id.

[6] Id. at ¶ 91.

[7] See id. at ¶ 95.

[8] Id. at ¶¶ 95-96.

technologies.[9] Assessing two sets of regulatory fees disadvantages companies in EMI's position vis a vis their competitors, which are subject to only one fee requirement. This disparate regulatory treatment makes it more difficult for alternative providers to succeed in the marketplace. Thus, EMI asks that the Commission eliminate the gross revenues fee for carriers that are subject to a separate call sign fee for the technology used to provide the underlying service.[10]

In the alternative, EMI suggests that the FCC delete the call sign fee for those authorizations used primarily to provide services for which a gross revenues fee is assessed. While this approach would be more cumbersome to implement and police because

---

[9] See e.g, Notice of Proposed Rulemaking, MM Docket No. 94-131, PP Docket No. 93-253, 9 FCC Rcd 7665, 7666 (1994) (goal in streamlining application procedures for Multipoint Distribution Service is to promote alternative technology to cable television); Report and Order, PR Docket No. 93-61, 10 FCC Rcd 4695, 4706 (1995) (expanding spectrum available to Location and Monitoring Service will encourage growth of alternative technologies, enabling consumers to satisfy their individual communications needs); Notice of Proposed Rulemaking, RM-8476, 9 FCC Rcd 4981, 4982 (allowing Interactive Video and Data Services licensees to use their authorizations for ancillary mobile (as opposed to fixed) services will enhance service offerings for consumers, producers and new entrants); FCC Chairman Reed E. Hundt, Address to the Harvard International Business Club, May 11, 1994 (personal communications services licensees should be given "unprecedented flexibility to use the spectrum to provide those services that they believe will have the greatest commercial value and to do so using the technologies of their choice.").

[10] Under EMI's proposal, the Commission could either eliminate the gross revenues fees outright or, consistent with the arrangements made for common carrier resellers, the gross revenues fees could be applied as a credit to the call sign fee assessment.

of the difficultly in determining the primary purpose of a given authorization, it would eliminate the double charging problem.

For the foregoing reasons EMI respectfully requests that the FCC reconsider the Fees Order to avoid double charging companies in EMI's position.

Respectfully submitted,

EMI COMMUNICATIONS CORPORATION

Cherie R. Kiser
Sara F. Seidman
Mintz, Levin, Cohn, Ferris
Glovsky and Popeo, P.C.
Suite 900
701 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202)434-7300

Its Attorneys

July 31, 1995

F1/41721.1

CERTIFICATE OF SERVICE

I, Tanya Butler, hereby certify that on this 31st day of July, 1995, a copy of the foregoing Petition for Partial Reconsideration was delivered by hand to each of the parties listed below.

Tanya Butler

Tanya Butler

Andrew S. Fishel
Managing Director
Federal Communications Commission
1919 M Street, N.W., Room 852
Washington, D.C. 20554

Susan H. Steiman
Deputy Associate General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 616
Washington, D.C. 20554

David Solomon
Deputy General Counsel
Federal Communications Commission
1919 M Street, N.W. Room 614
Washington, D.C. 20554

James B. Mullins
Office of General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 618
Washington, D.C. 20554